REMARKS

Claims 23-44 are pending and under current examination. Applicants have amended claims 23, 31, 33, and 41. Support for these amendments may be found in the specification at, for example, p. 11, ll. 22-25, and Fig. 2.

Applicants respectfully traverse the rejections made in the Final Office Action, wherein the Examiner rejected claims 23, 33, and 42-44 under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 7,289,437 ("*Chiruvolu*"); and rejected claims 24-32 and 34-41 under 35 U.S.C. § 103(a) as being unpatentable over *Chiruvolu* in view of U.S. Patent Application Pub. No. 2002/0176389 ("*Porikli*").

Rejection of Claims 23, 33, and 42-44 under 35 U.S.C. § 102(e):

Applicants request reconsideration and withdrawal of the rejection of claims 23, 33, and 42-44 under 35 U.S.C. § 102(e) as being anticipated by *Chiruvolu*.

In order to establish anticipation under 35 U.S.C. § 102, the Examiner must show that each and every element as set forth in the claim is found, either expressly or inherently described, in *Chiruvolu*. *See* M.P.E.P. § 2131. *Chiruvolu*, however, does not disclose each and every element of Applicants' claims. Specifically, *Chiruvolu* does not disclose or suggest at least Applicants' claimed "configuring at least a portion of said network so that a first portion of lightpaths exiting from said at least one node is classified as high priority lightpaths and adapted to carry said high priority traffic and a second portion of lightpaths exiting from said at least one node is classified as low priority lightpaths and adapted to carry said low priority traffic," as recited in amended claim 23 (emphases added).

In contrast, *Chiruvolu* discloses direct Light Channels ("LCs") and multi-hop Label Switched Paths ("LSPs"). *See Chiruvolu*, col. 3, ll. 56-62. Further, *Chiruvolu* discloses that *both*

high priority traffic ("HP") and low priority traffic ("LP") can be mapped on to direct LCs (*see Chiruvolu*, col. 2, ll. 50-54) as well as multi-hop LSPs (*see Chiruvolu*, Fig. 4, 406 and 418). That is, in *Chiruvolu*'s system, although the *traffic* is classified as having high and low priorities, the *lightpaths* (LCs or LSPs) are not classified as having high and low priorities for carrying HP and LP traffic, respectively. Instead, HP and LP traffic can be mapped onto any available LCs/LSPs, regardless of whether the LCs/LSPs are direct or multi-hop.

Moreover, *Chiruvolu* fails to disclose Applicants' claimed "tearing down said at least one low priority lightpath connected to said at least one depleted node interface" and "setting up at least one new temporary high priority lightpath starting from said at least one depleted node interface," as recited in claim 23 (emphasis added).

The Final Office Action alleged that "in order to reroute the LP traffic to a multi-hop LC, it is clear that the *LP trunk* must be torn down first ... and then the LP traffic, which previously carried by the LP trunk, may be rerouted to the multi-hop LC." Final Office Action, p. 10 (emphasis in original). According to the Final Office Action, col. 2, lines 42-49 of *Chiruvolu* "teaches the same tear-down procedure as set forth in claim 1." Final Office Action, p. 11. This is incorrect.

First, the "LP trunk" alleged by the Examiner does not match the "LP trunk" disclosed by *Chiruvolu*. The "LP trunk" disclosed by *Chiruvolu* refers to a portion of LP *traffic*. *See Chiruvolu*, Figs. 4-5 and col. 2, line 65 ("LP traffic trunks"). Network traffic, unlike network channels, cannot be torn down as alleged by the Final Office Action. On the other hand, for the network channels (Light Channels or LCs), as discussed above, *Chiruvolu* does not classify them as HP or LP, but only "direct" and "multi-hop" LCs. *Chiruvolu*'s method, however, does not tear down direct LCs when rerouting LP traffic to multi-hop LCs, because the direct LCs freed

from the rerouted LP traffic are made available to HP traffic. *See Chiruvolu*, Fig. 4, block 408 "Map HP Trunk to *Old* LC of Victim LP Trunk" (emphasis added). In other words, it is the purpose of *Chiruvolu*'s method to *save* direct LCs for HP traffic, thus the direct LCs cannot be torn down as alleged by the Final Office Action.

Second, the Final Office Action ignored Applicants' arguments presented in the Amendment filed April 10, 2009, in which Applicants pointed out that even though *Chiruvolu* discloses a tearing-down process (Fig. 6, steps 616-620 and col. 7, ll. 4-12), *Chiruvolu*'s tearing-down process is completely different from Applicants' claimed "tearing down." This is because *Chiruvolu*'s tearing-down of LC is not for forwarding HP traffic in the event of LC overutilization (high traffic load), but for closing inefficient LC when the traffic on such LC is low. However, the Final Office Action cited col. 2, lines 42-49 of *Chiruvolu*, alleging that *Chiruvolu* "teaches the same tear-down procedure as set forth in claim 1." Final Office Action, p. 11. In fact, the Final Office Action's citation of *Chiruvolu*, which reads "LCs that are *underutilized* are torn down, thereby freeing up the relevant optical resources ..." (emphasis added), clearly states that *Chiruvolu*'s "tearing-down" is due to underutilization. Therefore, the arguments presented in the Final Office Action are incorrect and this rejection is improper.

Since *Chiruvolu* does not disclose each and every element of independent claim 23, *Chiruvolu* does not anticipate Applicants' independent claim 23 under 35 U.S.C. § 102(e). Therefore, independent claim 23 should be allowable over *Chiruvolu*. Independent claim 33, while of different scope, contains similar recitations as independent claim 23, and should also be allowable for the same reasons as independent claim 23. In addition, dependent claims 42-44 should be allowable at least by virtue of their dependence from independent claim 33, and

because they recite additional features not taught or suggested by *Chiruvolu*. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection.

Rejection of Claims 24-32 and 34-41 under 35 U.S.C. § 103(a):

Applicants request reconsideration and withdrawn of the rejection of claims 24-32 and 34-41 under 35 U.S.C. § 103(a) as being unpatentable over *Chiruvolu* in view of *Porikli*.

The Final Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. *See* M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007). In particular, the Final Office Action has not properly determined the scope and content of the prior art, nor has the Final Office Action properly ascertained the differences between the claimed invention and the prior art, at least because the Final Office Action has not properly interpreted the prior art and considered *both* the invention *and* the prior art *as a whole*. *See* M.P.E.P. § 2141(II)(B).

As explained above, Applicants have established that *Chiruvolu* does not disclose or suggest at least Applicants' claimed "configuring at least a portion of said network so that a first portion of lightpaths exiting from said at least one node is classified as high priority lightpaths and adapted to carry said high priority traffic and a second portion of lightpaths exiting from said at least one node is classified as low priority lightpaths and adapted to carry said low priority traffic," as recited in amended claim 23 (emphases added).

Porikli does not cure the deficiencies of *Chiruvolu*. For example, *Porikli* discloses "a method [which] dynamically allocates and renegotiates bandwidth to traffic having a variable data rate in a network." *Porikli*, Abstract. However, *Porikli* does not disclose or suggest

Applicants' claimed "configuring at least a portion of said network so that a first portion of lightpaths exiting from said at least one node is classified as high priority lightpaths and adapted to carry said high priority traffic and a second portion of lightpaths exiting from said at least one node is classified as low priority lightpaths and adapted to carry said low priority traffic," as recited in amended claim 23 (emphases added).

Thus, the Final Office Action has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the prior art and the claimed invention. Applicants therefore submit that independent claim 23 is not obvious over *Chiruvolu* and *Porikli*, whether taken either alone or in combination. Independent claim 23 should therefore be allowable. Independent claim 33, while different in scope, contains similar recitations as independent claim 23, and should also be allowable for the same reason as independent claim 23. Therefore, dependent claims 24-32 and 34-41 should be allowable at least by virtue of their respective dependence from independent claim 23 or 33, and because they recite additional features not taught or suggested by *Chiruvolu* and *Porikli*. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

Conclusion:

Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 23-44 are in condition for allowance, and Applicants request a favorable action.

The Final Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Final Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: October 2, 2009

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